

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

|                                  |   |             |
|----------------------------------|---|-------------|
| JOSE HERNANDEZ,                  | : |             |
| Plaintiff,                       | : |             |
|                                  | : |             |
| v.                               | : | CA 09-467 S |
|                                  | : |             |
| MICHAEL J. ASTRUE, Commissioner, | : |             |
| Social Security Administration,  | : |             |
| Defendant.                       | : |             |

**REPORT AND RECOMMENDATION**

David L. Martin, United States Magistrate Judge

This matter is before the Court on the request of Plaintiff Jose Hernandez ("Plaintiff") for judicial review of the decision of the Commissioner of Social Security ("the Commissioner"), denying Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI"), under §§ 205(g) and 1631(c)(3) of the Social Security Act, as amended, 42 U.S.C. §§ 405(g) and 1383(c)(3) ("the Act"). Defendant Michael J. Astrue ("Defendant") has filed a motion under sentence four of 42 U.S.C. § 405(g) for remand of the case to the Commissioner for further administrative proceedings. See Assented-to Motion for Entry of Judgment under Sentence Four of 42 U.S.C. § 405(g) with Reversal and Remand of the Cause to the Defendant (Document ("Doc.") #4) ("Defendant's Motion"). Defendant states that "Plaintiff's counsel ... has assented to this motion." Memorandum in Support of Assented-to Motion for Entry of Judgment under Sentence Four of 42 U.S.C. § 405(g) with Reversal and Remand of the Cause to the Defendant ("Defendant's Mem.") at 1.

The matter has been referred to this Magistrate Judge for preliminary review, findings, and recommended disposition. See 28 U.S.C. § 636(b)(1)(B). I find that remand to the Commissioner is appropriate. Accordingly, I recommend that Defendant's Motion

be granted.

### **Facts and Travel**

Plaintiff alleges disability due to depression, a mood disorder, Post Traumatic Stress Disorder, and cognitive/intellectual deficits. Complaint (Doc. #1) ¶ 8. Plaintiff's applications for DIB and SSI were denied initially and upon reconsideration, and Plaintiff timely requested a hearing before an administrative law judge ("ALJ"). Id. ¶ 3. After said hearing, at which Plaintiff appeared, the ALJ issued a decision dated May 5, 2009, denying Plaintiff's claim. Id. ¶¶ 4-5. On September 14, 2009, the Decision Review Board ("DRB") affirmed the decision of the ALJ, thereby rendering that decision the final decision of the Commissioner. Id. ¶ 6. Plaintiff thereafter filed this action for judicial review.

### **Discussion**

Section 405 of Title 42 of the United States Code ("U.S.C.") provides, in relevant part, that: "The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g). Defendant requests that the Court remand the matter in order that the DRB "further evaluate Plaintiff's mental impairment and hypertension, with specific consideration of the opinion evidence from Catherine M. May, Nurse Practitioner." Defendant's Mem. at 1.

Based on Defendant's request and Plaintiff's assent, the Court finds that remand to the Commissioner for further administrative proceedings as outlined above is warranted. Accordingly, I recommend that Defendant's Motion be granted.

### **Conclusion**

I recommend that Defendant's Motion be granted, that judgment be entered in Plaintiff's favor, and that the matter be

remanded for further administrative proceedings, i.e., for the DRB to "further evaluate Plaintiff's mental impairment and hypertension, with specific consideration of the opinion evidence from Catherine M. May, Nurse Practitioner," Defendant's Mem. at 1. Any objections to this Report and Recommendation must be specific and must be filed with the Clerk of Court within fourteen (14) days of its receipt. See Fed. R. Civ. P. 72(b); DRI LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the district court and of the right to appeal the district court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1<sup>st</sup> Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1<sup>st</sup> Cir. 1980).

/s/ David L. Martin  
DAVID L. MARTIN  
United States Magistrate Judge  
January 20, 2010